Supreme Court, U.S.
FILED
FEB 22 1993
OFFICE OF THE CLERK

NO. 92-1198

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ELLIS MATYASTIK,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
COUNTY COURT AT LAW NO. 2
MCLENNAN COUNTY, TEXAS

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
FAILURE TO GIVE NOTICE	1
EXCERPTS FROM TESTIMONY	4
FALSE EVIDENCE FROM STATE	7
EXCERPTS FROM TESTIMONY	8
CONCLUSION	12
APPENDIX (Photographs)	1a

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FAILURE TO GIVE NOTICE

The provision in the City Ordinance that notice is not required in order to prosecute nor is it a defense to prosecution is used by the City of Waco as their defense and excuse for not giving petitioner the notice that is given to every other citizen in the City of Waco.

When the City of Waco gives every other person in the city of Waco written

notice and an opportunity to cure the alleged violation of the City Ordinance and did not give the same opportunity to petitioner, petitioner has been denied due process and the equal protection of the law.

The City of Waco hides behind its own ordinance in denying due process and the equal protection of the law to petitioner.

Petitioner did not err in stating that every other person subject to the Ordinance is given written notice and an opportunity to cure the violation of the Ordinance.

Petitioner is not claiming that before a person can be cited or summoned into court for a violation of an ordinance, that the State must give that person writte notice of the violation and an opportunity to cure the violation.

However, when that is the process and procedure followed by the State for every other person, it is a denial of the equal protection of the law and of due process of

law to deny to petitioner the same written notice and opportunity to cure.

Respondent tries to claim that it gave notice to petitioner by way of a conversation with a third party or that a third person gave petitioner notice in February, 1990, or in April, 1990, that petitioner was violating the weed/grass ordinance on September 24, 1990. Such a claim is absurd and ridiculous.

Further, petitioner was given no notice at any time that he was in violation of the weed/grass ordinance, nor was he given any opportunity to cure the alleged violation.

The following excerpts from the testimony of City Inspector Pirelo are quoted in support of the above.

The testimony is from the Statement of Facts, Volume II of IV, from the trial.

EXCERPTS FROM TESTIMONY

Q How many times have you brought somebody to Court without giving them an opportunity to cure any alleged violation of any city ordinance, Robert?

A Without any -- I've never done that.

Page 82, lines 13 - 16

Q Do you have anything in your file to show any communication with Bill Matyastik about weeds and grass on his property,..?

A I have nothing to show you.

Q You have nothing. You have no memos, you have no communication, you have no letter to him. Do you?

A No, that's right.

Page 88, line 17 - 25, thru Page 89, line 2

On page 25, line 8, the State's witness and inspector was asked about his job responsibilities as an environmental inspector.

At line 15, page 25, Inspector Pirelo answered that his job included "sending

notices on anything above 12 inches". . . . (emphasis added) He tried to say that he gave notice to petitioner by a phone conversation with a third party or that a third party gave the notice in a conversation.

Petitioner would show the Court that this is not "sending notices," and shows that he had no notice of the alleged violation at any time, nor in any manner or by any means.

On page 47, line 16, Inspector Pirelo was asked "What is the notice provision (in the City ordinance)?"

On line 17, Pirelo's answer was "Ten days."

Q What kind of notice is it?

A Well, we have two different kinds. Like I said, one would be the handwritten -- what we call a litter ticket. The other one would be notification through a computer-generated letter. Page 47, lines 18 - 22

Q Is this some kind of written notice?

A Yes, it is. It's typewritten, computer-generated.

Q This is not something that's done over the telephone, is it?

A Huh-huh.

Q This is not something done through a third party. Is it?

A No.

Page 48, lines 3 - 10

Q Can you show me what notice that you gave to Bill Matyastik that he needed to mow his grass in September of 1990?

A Only conversations.

Q Did you ever have a conversation with Bill?

A No.

Page 49, lines 6 - 11

FALSE EVIDENCE FROM STATE

Photographs taken to distort the height of items in the picture, when height is the issue, constitute false evidence.

When such distorted and false evidence is put into evidence before the jury, this is false and perjured testimony.

When this is done knowingly by more than one party or person, it becomes a conspiracy to deprive the petitioner of a fair trial and deny petitioner's right to due process and the equal protection of the law.

The excerpts from the testimony of City Inspector Pirelo, presented on pages 8 thru 11, are quoted in support of the above.

The photographs in the appendix, all taken by Respondent, are in support of the above and refute Pirelo's statement that the property was not mowed from February 1990 to September 24, 1990.

EXCERPTS FROM TESTIMONY

Q Did you kneel down to take these pictures?

A I really don't know.

Q Is that possible?

A Yeah, it could be possible.

Page 57, lines 11 - 14

Q Tell me, Robert, how tall is that -- would you remember that rope being there?

A Yes, sir.

Q How tall is it?

A The same height of the fence at this end and that end, too. But -- I don't know, a foot, a foot and a half from the lowest point.

Page 62, line 20 - 25, page 63, line 1

Q Let me show you the rope in this picture. Can you tell me how tall it is there?

A Considerably higher.

Q Robert, how can -- tell me how tall that rope is in that picture, if it's a foot, a foot and a half in this picture.

A Much higher.

Page 63, line 21 - 25, Page 64, line 1 -4

Q So you didn't go by an exact, precise measurement?

A That's right.

Q And the same thing here, this appears to be, to you, maybe two feet tall here?

A Right.

Q It appears to you to be, what? Eight feet tall here?

A I wouldn't say eight feet, no. I don't know. Maybe -- well, depending on how tall that is. I don't know, maybe five feet. I don't know.

Q Okay. So it's two feet here and five feet here?

A Yeah.

Page 69, lines 1 - 11

Q Robert, can you tell me why in one picture the rope is two feet off the ground and in another picture it's five feet off the ground?

A I don't know.

Page 69, lines 21 - 24

Q Do you see the rope on that picture?

A Yes, I do.

Q How tall is it in that picture, Robert?

A It's above the top of the rebar in this one.

Q Is that one foot or two feet or three feet?

A I don't know. I didn't measure that. I wasn't paying any attention.

Q From your best observation.

A I don't know. Maybe three feet.

Q And this is the same rope that we have in the other two pictures?

A Right.

Q In the other two pictures it was one and a half to two or maybe five, and how it's three feet. Is that right?

A Huh-huh.

Page 73, lines 4 - 21

Q Robert, if we had a witness come to Court and say that he saw you kneeling in the street to take a picture, would that be true or false?

A I probably wouldn't deny it.

Page 74, lines 12 - 15

Q Were some of these pictures taken with you kneeling in the street?

A I don't know.

Page 74, line 24 - Page 75, line 1

Q What is this here in this picture under the rope?

A Right there is a tree.

Page 75, line 10 - 11

Q Did you just tell these ladies and gentlemen that this property was never mowed?

A Yes, that's what I said.

Page 89, lines 14 - 17

CONCLUSION

Petitioner would show the Court that the State has grossly distorted the facts and the evidence and has conspired with its witnesses to deny petitioner a fair trial and due process of law and the equal protection of the law.

For these reasons, petitioner's petition for certiorari should be granted.

Respectfully submitted,

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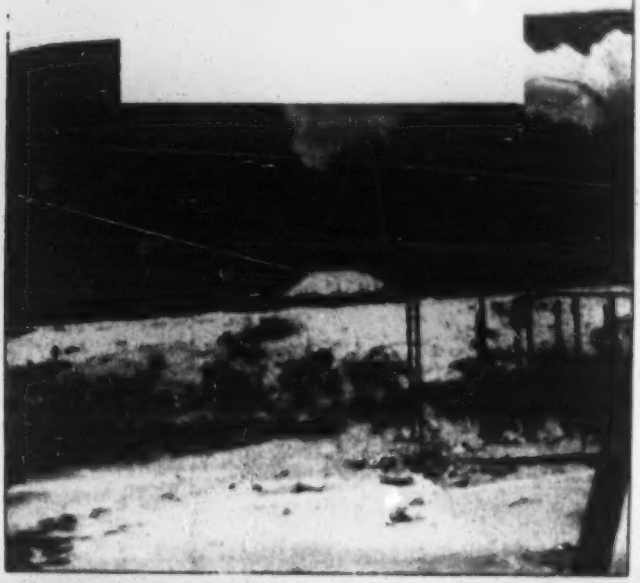
Rope –

(Ta

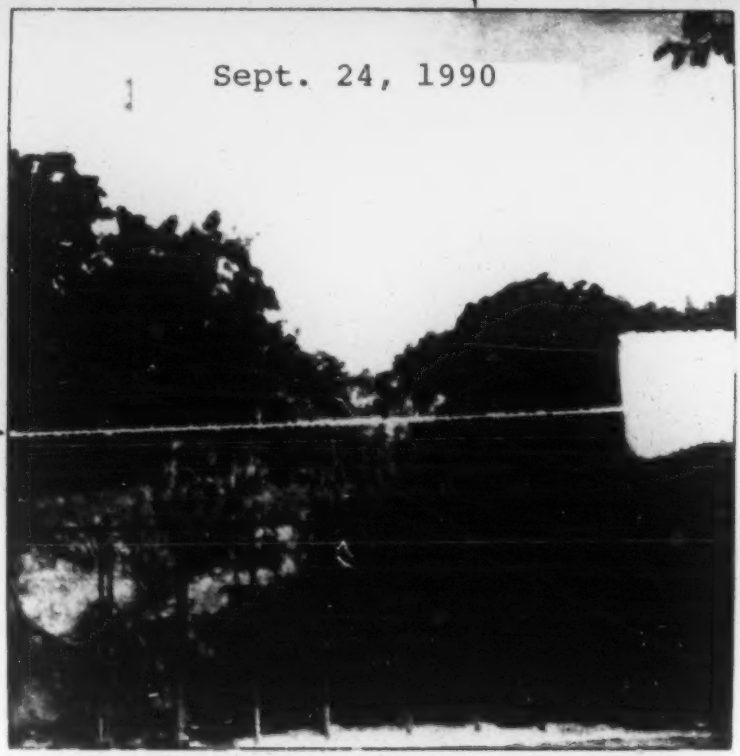
Aug. 15, 1990



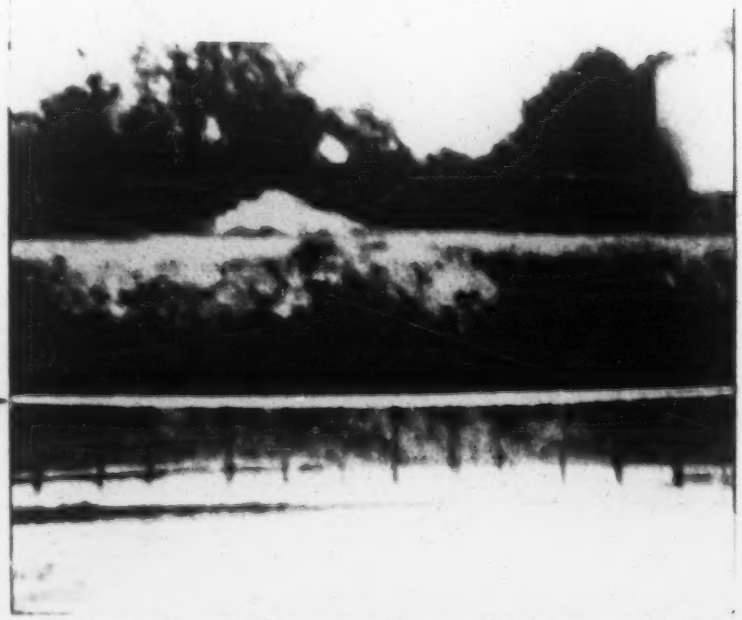
pe →

Sept. 1, 1990
(Taken inside the rope 80 feet from the trailer)

Sept. 24, 1990



Nov. 26, 1990



Rope remained in same position. Photo on Sept. 24, 1990, shows the rope midway up trailer, or 12 feet above street level at the curb. Rope was actually 3 feet above the street. Height of rope and grass on Sept. 24, 1990, was distorted.